



One Greenway Plaza
Suite 100
Houston, Texas 77046
www.najvarlaw.com

Jerad Wayne Najvar
O : 281.404.4696
F : 281.582.4138
jerad@najvarlaw.com

November 18, 2012

Mr. Anthony Herman
Federal Election Commission
Office of the General Counsel
999 E. St. NW
Washington, DC 20463

Via email: kcollins@fec.gov

Re: MUR 6671

Dear Mr. Herman:

Enclosed please find our clients' response to the complaint in the above-referenced matter.

Please let me know if I can be of further assistance.

Very respectfully,

A handwritten signature in black ink, appearing to read 'Jerad Najvar'.
Jerad Najvar

Enc.

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BEFORE THE FEDERAL ELECTION COMMISSION

WEBER FOR CONGRESS, AND ROBERT NOLEN,
AS TREASURER OF WEBER FOR CONGRESS

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MUR 6671

RESPONSE TO COMPLAINT

Respondents Weber for Congress, and Robert Nolen, as Treasurer of Weber for Congress, by and through the undersigned counsel, hereby respond to the complaint filed in the above-captioned Matter Under Review, and respectfully request that the Commission find no reason to believe a violation of the Act occurred, and dismiss the complaint.

I. ANALYSIS

a. All contributions identified in the complaint were accepted in accordance with the Federal Election Campaign Act and Commission regulations

As an initial matter, this complaint was clearly filed for political purposes in hopes of garnering media attention in the immediate run-up to the General Election. The complaint seized upon errors in Weber for Congress's third quarter report which were largely the result of data entry mistakes. Weber for Congress ("the Committee") corrected these errors in its amended report filed October 24, 2012, more than a week before receiving official notice of this complaint. As described below, all contributions seized upon by the complainant were legally made and accepted, and the Committee's amended report now reflects the appropriate attributions and designations. The contributions at issue are discussed in turn.

Charles Medlin. The committee received a check for \$5,000 on August 31, 2012 drawn on an account bearing Charles Medlin's name and signed by Charles Medlin. The memo line reads "DONATION C+P." However, since Mr. Medlin alone signed the check, the contribution was reported as it was received (showing the full amount from Mr. Medlin). 11 C.F.R. § 110.1(k)(1). The committee had 60 days from the date of receipt to secure a signed letter

reattributing or redesignating the excessive portion of this contribution. 11 C.F.R. §§ 110.1(b)(5)(ii)(A) (redesignations); 110.1(k)(3)(ii)(A)(2) (reattributions). On October 27, 2012, well before expiration of the 60 day deadline, the committee received a letter signed by Charles Medlin and Patricia B. Medlin reattributing \$2,500 to Ms. Medlin for the general election.

Exhibit E. The reattribution will be reflected on the post-general report, which covers the time period during which the reattribution was received. 11 C.F.R. § 104.8(d)(3).

Carl Davis. A check for \$5,000 drawn on an account in the name of Carl Davis bears the signatures of Carl Davis and Lois Davis. Exhibit A. This constitutes a joint contribution and, because the contributors provided no attribution, the committee was required under Commission regulations to attribute it equally to each contributor. 11 C.F.R. § 110.1(k)(1), (2). The original report filed October 15, 2012 showed a \$5,000 contribution from Carl Davis alone. This was a data entry error. The amended report filed October 24 reflects a \$2,500 contribution from each contributor.

Richard Hawkins. The committee received a check for \$5,000 on September 26, 2012 drawn on an account bearing the names "Richard J. Hawkins" and "Adrianne L Hawkins." The memo line reads "Jay/Adrianne." Exhibit D. Consistent with Commission regulations, the committee attributed the permissible portion to the signer (Mr. Hawkins) and presumptively reattributed \$2,500 to Adrianne Hawkins. 11 CFR 110.1(k)(3)(ii)(B)(1). The committee provided written notice of such reattribution to the contributors within the 60 day deadline. *Id.* 110.1(k)(3)(ii)(B)(2)-(3). *See Exhibits F, G.*

The original report filed October 15, 2012 mistakenly attributed both of these contributions to Richard Hawkins. This was a data entry error; the committee failed to enter

Adrienne's name in its spreadsheet before uploading the data into FECFile. The amended report filed October 24, 2012 reflects the proper attribution.

Kevin Lilly. The committee received a \$5,000 contribution by wire transfer dated September 21, 2012 from an account bearing Kevin Lilly's name. The contribution was reported as it was received (showing the full amount from Kevin Lilly). On November 13, 2012, well before expiration of the 60 day deadline, the committee received its reattribution letter signed by Kevin Lilly and Lesley Lilly reattributing \$2,500 to Mrs. Lilly. Exhibit H; see 11 C.F.R. § 110.1(k)(3)(ii)(A). The reattribution will be reflected on the post-general report, which covers the time period during which the reattribution was received. 11 C.F.R. § 104.8(d)(3).

Kent Watts. The committee received two checks on September 15, 2012, both drawn on an account bearing Kent Watts's name and both signed by Mr. Watts. However, the memo lines clearly indicate the donors' intent: one check is attributed to Mr. Watts and one check is attributed to his wife, Mrs. Fran Watts. See Exhibit B. Because Mr. Watts signed both checks, the committee's original report filed October 15 shows \$5,000 in contributions from Mr. Watts, noting that reattribution of \$2,500 was requested. The reattribution letter, bearing signatures of both Mr. and Mrs. Watts, was received October 22, well within the 60 day deadline. Exhibit C. It confirms that check 10455 is a contribution from Mrs. Watts. The committee's amended report filed October 24, 2012 notes the receipt of the signed reattribution, and such reattribution will be reflected on the post-general report, which covers the time period during which the reattribution was received. 11 C.F.R. § 104.8(d)(3).

Michael & Myla Ramsey. On September 11, 2012, the committee received an envelope containing two checks, each in the amount of \$7,500, one from Michael Ramsey and one from Myla Ramsey. The checks were accompanied by a cover letter stating: "Enclosed herein are

mine and Myla's campaign contribution checks, each in the amount of \$7,500.00, in regard to your primary runoff and general elections." The letter is signed by Michael Ramsey.

The original report filed October 15, 2012 mistakenly attributed all of Michael's and Myla's contributions to the general election. This was a data entry error; the committee failed to properly code the contributions for the designated elections in its spreadsheet before uploading the data into FECFile. The amended report filed October 24, 2012 reflects the proper designations.

Commission regulations provide that an authorized committee "may accept contributions made after the date of the election if: (A) Such contributions are designated in writing by the contributor for that election...." *Id.* § 110.1(b)(3)(iii). A contribution "shall be considered to be designated in writing for a particular election if[:]"

- (i) The contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made;
- (ii) The contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or
- (iii) The contribution is redesignated in accordance with 11 CFR 110.1(b)(5).

11 C.F.R. § 110.1(b)(4).¹ Notably, this regulation does not require that a contributor use any particular language or notation to indicate to which election the contribution is to be attributed. Rather, the requirement is that the "check, money order, or other negotiable instrument...clearly indicates" the election. This is a standard that considers the instrument as a whole, with consideration of all information on the face of the instrument. As in other areas of law, the circumstances of a contribution may provide additional clarity.

¹ These contributions do not exceed net debts outstanding for the primary or runoff or the applicable contribution limit of \$2,500. 11 C.F.R. § 110.1(b)(3)(iii).

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Weber for Congress served as Randy Weber's authorized committee through three elections: the May 29, 2012 primary, the July 31 runoff (which Weber won), and the November 6 general election. These contributions were made and received after the runoff and before the general election.

Both checks are written for \$7,500—the exact amount of the aggregate maximum contribution for each of the three elections for which an individual may contribute. The timing of the contributions (coming after the runoff but before Weber had won the General), and the specific amount, make clear *on the face of these checks* that the contributions were given with respect to the primary, runoff, and general elections. This is distinguishable from a situation in which, for example, a contributor who had not previously given to the campaign sends an undesignated check for \$5,000 after a runoff election victory. In that case it would not be clear to which elections the donor intended to designate the funds. By contrast, the Commission ought to find that, under these circumstances, Michael's and Myla's checks for \$7,500 each "clearly indicate[] the particular election with respect to which the contribution is made," even without the benefit of the cover letter. *See id.* § 110.1(b)(4)(i).

Even if not deemed to be clearly designated from the face of the instrument, because Michael Ramsey's check was accompanied by a writing signed by him designating his contributions for the primary, runoff, and general elections, his contributions were properly made and accepted. *See id.* § 110.1(b)(4)(ii).

While Myla did not physically sign the cover letter, the letter references both of their checks, and Myla's contribution check was included in the same envelope. Michael Ramsey clearly signed with her permission. The Commission ought to determine that this particular

cover letter satisfies the requirements of an accompanying designation because it is clear that Ms. Ramsey's husband signed the designation on her behalf and with her permission.

b. Even if a technical violation is alleged with respect to the Myla Ramsey contributions, it does not warrant Commission resources for enforcement

As described above, the documentation establishes that all contributions were legally made and accepted, with the only possible exception being the debt retirement contributions from Myla Ramsey, depending on the Commission's interpretation of whether the designations were "clearly identified" on the instrument itself, and/or the Commission's application of the signature requirement for the accompanying writing. Respondents urge the Commission to determine that the contributions were properly designated. In the alternative, Respondents welcome the opportunity to work with the Commission to remedy the deficiency.

II. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Commission find no reason to believe a violation of the Act has occurred, and dismiss the complaint.

Respectfully submitted,



Jerad Wayne Najvar
NAJVAR LAW FIRM
One Greenway Plaza, Suite 100
Houston, TX 77046
281.404.4696 phone
281.582.4138 fax
jerad@najvarlaw.com

Dated: November 18, 2012